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Attorneys for Plaintiff
YINTAO YU

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

YINTAO YU, an individual,

Plaintiff,

v.

BYTEDANCE, INC., a Delaware
Corporation; SHUYI (SELENE) GAO, an
individual,

Defendants.

BYTEDANCE, INC., a Delaware
Corporation,

Counterclaimant,

v.

YINTAO YU, an individual,

Counter-Defendant.

Case No. 3:23-cv-04910-SI

**DECLARATION OF CHARLES H. JUNG
IN SUPPORT OF PLAINTIFF/COUNTER-
DEFENDANT YINTAO YU'S MOTION
FOR LEAVE TO FILE A MOTION FOR
RECONSIDERATION OF ORDER RE:
DISCOVERY (ECF NO. 78)**

State Action Filed: September 5, 2023
Removed: September 25, 2023
Trial Date: November 18, 2024

1 I, Charles H. Jung, declare as follows:

2 1. I am one of the attorneys representing Plaintiff Yintao Yu (“Plaintiff”) in the above-
3 captioned matter. I am admitted to practice law before this Court and all California Courts. I make
4 this declaration in support of Plaintiff’s Motion for Leave to File a Motion for Reconsideration of
5 Order re: Discovery (ECF No. 78). I have personal knowledge of the matters stated herein and if
6 called as a witness, I could and would competently testify to the following.

7 2. I experienced what appeared to be a cyberattack within days of the date that
8 Plaintiff’s complaint in the state court case was reported in The New York Times. Attached hereto
9 as **Exhibit A** is a true and correct copy of the New York Times report on the underlying case dated
10 May 12, 2023. Thomas Fuller & Sapna Maheshwari, *Ex-ByteDance Executive Accuses Company of*
11 *‘Lawlessness’*, THE NEW YORK TIMES (May 12, 2023),
12 <https://www.nytimes.com/2023/05/12/technology/tiktok-bytedance-lawsuit-china.html>.

13 3. My mobile phone began responding in a bizarre fashion, in a manner I had not
14 previously experienced. The behavior was so unusual and persistent that I was forced to reinstall my
15 operating system.

16 4. Shortly after the reporting in the New York Times, I was on a Zoom call with my
17 client through my work computer. On that client call, and for the first time in my years of using the
18 Zoom application since the pandemic, someone intruded on my Zoom call. With only a visible black
19 square and the name “mary” in lower case, the person would not respond to my queries as to their
20 identity, and shortly thereafter disappeared.

21 5. The New York Times story was published on a Friday. The next time I returned to
22 the office, I was alarmed to find my computer turned-on and unlocked. This was alarming because I
23 habitually turn off my computer every day at the end of work, and I recalled doing so in particular
24 the prior work day. Concerned, I caused my IT service provider to conduct a review of our office
25 system, which was inconclusive.

26 6. I also became aware that on or about the same time, Mr. Yu experienced similarly
27 concerning disruptions on his computer. ByteDance has previously admitted to gaining unauthorized
28

1 access to individuals' computers. Through my work on this case, I became aware that ByteDance
2 admitted to spying on journalists by gaining access to their IP addresses and other data belonging to
3 the journalists their contacts through individual TikTok accounts. Ken Dilanan & Rebecca Shabad,
4 *The DOJ and FBI Are Investigating TikTok Over Allegations That Employees Spied on Journalists*,
5 NBC NEWS (Mar. 17, 2023), [https://www.nbcnews.com/politics/justice-department/doj-fbi-are-](https://www.nbcnews.com/politics/justice-department/doj-fbi-are-investigating-tiktok-allegations-employees-spied-journalis-rcna75497)
6 [investigating-tiktok-allegations-employees-spied-journalis-rcna75497](https://www.nbcnews.com/politics/justice-department/doj-fbi-are-investigating-tiktok-allegations-employees-spied-journalis-rcna75497) (a true and correct copy of
7 which is attached hereto as **Exhibit B**).

8 7. In light of what happened to my devices and to Mr. Yu's computer, I caused a letter
9 to be sent to ByteDance's counsel demanding they confirm or investigate whether ByteDance had
10 launched a cyberattack against Mr. Yu or anyone else related to him. Attached hereto as **Exhibit C**
11 is a true and correct copy of that correspondence.

12 8. ByteDance's counsel responded without denying the allegations, stating that "you are
13 not the Court and therefore are not entitled to make demands," Attached hereto as **Exhibit D** is
14 a true and correct copy of ByteDance's counsel's response.

15 9. Based on the evidence I reviewed, combined with ByteDance's non-denial, I believe
16 Mr. Yu and I were the victims of cyberattacks launched by ByteDance.

17 10. Attached hereto as **Exhibit E** is a true and correct copy of a press release by Senator
18 Ron Wyden addressing security risks caused by TikTok's relationship to its China-based corporate
19 parent, available at: [https://www.wyden.senate.gov/news/press-releases/wyden-statement-on-aid-to-](https://www.wyden.senate.gov/news/press-releases/wyden-statement-on-aid-to-israel-and-ukraine-crackdown-on-fentanyl-trafficking-and-tiktok-divestment-legislation)
20 [israel-and-ukraine-crackdown-on-fentanyl-trafficking-and-tiktok-divestment-legislation](https://www.wyden.senate.gov/news/press-releases/wyden-statement-on-aid-to-israel-and-ukraine-crackdown-on-fentanyl-trafficking-and-tiktok-divestment-legislation).

21 11. Attached hereto as **Exhibit F** is a true and correct copy of an article from The New
22 York Times published December 22, 2022, attached for the Court's convenience. Cecilia Kang,
23 *ByteDance Inquiry Finds Employees Obtained User Data of 2 Journalists*, THE NEW YORK TIMES
24 (Dec. 22, 2022), [https://www.nytimes.com/2022/12/22/technology/byte-dance-tik-tok-internal-](https://www.nytimes.com/2022/12/22/technology/byte-dance-tik-tok-internal-investigation.html)
25 [investigation.html](https://www.nytimes.com/2022/12/22/technology/byte-dance-tik-tok-internal-investigation.html).

26 12. Attached here as **Exhibit G** is a true and correct copy of an article from Forbes
27 published October 20, 2022, attached for the Court's convenience. Emily Baker-White, *TikTok*
28

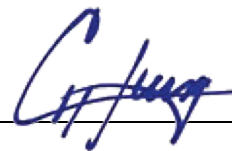
1 *Parent ByteDance Planned To Use TikTok To Monitor The Physical Location Of Specific American*
2 *Citizens*, FORBES (Oct. 20, 2022 3:24 PM), [https://www.forbes.com/sites/emilybaker-](https://www.forbes.com/sites/emilybaker-white/2022/10/20/tiktok-bytedance-surveillance-american-userdata/?sh=5c437cd16c2d)
3 [white/2022/10/20/tiktok-bytedance-surveillance-american-userdata/?sh=5c437cd16c2d](https://www.forbes.com/sites/emilybaker-white/2022/10/20/tiktok-bytedance-surveillance-american-userdata/?sh=5c437cd16c2d) (last visited
4 May 21, 2024).

5 13. Attached here as **Exhibit H** is a true and correct copy of an article from Voice of
6 America published November 12, 2015, attached for the Court's convenience. *Amnesty: Chinese*
7 *Police Use Torture to Extract Confessions*, Voice of America, (Nov. 12, 2015 7:56 AM)
8 [https://www.voanews.com/a/report-finds-chinese-police-using-torture-to-extract-](https://www.voanews.com/a/report-finds-chinese-police-using-torture-to-extract-confessions/3054494.html)
9 [confessions/3054494.html](https://www.voanews.com/a/report-finds-chinese-police-using-torture-to-extract-confessions/3054494.html) (last visited May 21, 2024).

10 14. Attached here as **Exhibit I** is a true and correct copy of an article from Amnesty
11 International published November 11, 2015, attached for the Court's convenience. *Torture in China:*
12 *Who, What, Why and How*, Amnesty International (Nov. 11, 2015)
13 <https://www.amnesty.org/en/latest/campaigns/2015/11/torture-in-china-who-what-why-and-how>
14 (last visited May 20, 2024).

15 I declare under penalty of perjury under the laws of the United States of America that the
16 foregoing is true and correct.

17
18 DATED: May 21, 2024

19
20 

21 Charles H. Jung
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EXHIBIT A

Ex-ByteDance Executive Accuses Company of 'Lawlessness'

The former executive sued ByteDance, which owns TikTok, for wrongful termination and accused the company of lifting content from rivals and “supreme access” by the Chinese Communist Party.



By Thomas Fuller and Sapna Maheshwari

May 12, 2023

Sign up for the It Happened Online newsletter, for Times subscribers only. Madison Malone Kircher breaks down the internet stories that have your timelines, feeds and group chats buzzing. [Get it in your inbox.](#)

A former executive at ByteDance, the Chinese company that owns TikTok, has accused the technology giant of a “culture of lawlessness,” including stealing content from rival platforms Snapchat and Instagram in its early years, and called the company a “useful propaganda tool for the Chinese Communist Party.”

The claims were part of a wrongful dismissal suit filed on Friday by Yintao Yu, who was the head of engineering for ByteDance’s U.S. operations from August 2017 to November 2018. The complaint, filed in San Francisco Superior Court, says Mr. Yu was fired because he raised concerns about a “worldwide scheme” to steal and profit from other companies’ intellectual property.

Among the most striking claims in Mr. Yu’s lawsuit is that ByteDance’s offices in Beijing had a special unit of Chinese Communist Party members sometimes referred to as the Committee, which monitored the company’s apps, “guided how the company advanced core Communist values” and possessed a “death switch” that could turn off the Chinese apps entirely.

“The Committee maintained supreme access to all the company data, even data stored in the United States,” the complaint said.

Mr. Yu’s claims, which describe how ByteDance operated five years ago, are surfacing as TikTok faces intense national scrutiny over its relationship with its parent company and China’s potential influence on the platform. The video app, which is used by more than 150 million Americans, has become hugely popular for memes and entertainment. But lawmakers and U.S. officials are concerned that the app is passing sensitive information about Americans to Beijing.

In March, a congressional committee grilled TikTok’s chief executive, Shou Chew, about the app’s Chinese ownership. Christopher Wray, the director of the Federal Bureau of Investigation, recently said that TikTok “screams out with national security concerns.” More than two dozen states have banned TikTok from government devices since November.

In an emailed statement, ByteDance said Friday that the company would “vigorously oppose what we believe are baseless claims and allegations in this complaint.”

“Mr. Yu worked for ByteDance Inc. for less than a year and his employment ended in July 2018. During his brief time at the company, he worked on an app called Flipagram, which was discontinued years ago for business reasons,” the statement said.

In his complaint, Mr. Yu, 36, said that as TikTok sought to attract users in its early days, ByteDance engineers copied videos and posts from Snapchat and Instagram without permission and then posted them to the app. He also claimed that ByteDance “systematically created fabricated users” — essentially an army of bots — to boost engagement numbers, a practice that Mr. Yu said he flagged to his superiors.

Mr. Yu says he raised these concerns with Zhu Wenjia, who was in charge of the TikTok algorithm, but that Mr. Zhu was “dismissive” and remarked that it was “not a big deal.”

Mr. Yu, who spent part of his ByteDance tenure working in its China offices, said he also witnessed engineers for Douyin, the Chinese version of TikTok, tweak the algorithm to elevate content that expressed hatred for Japan. In an interview, he said that the promotion of anti-Japanese sentiments, which would make it more prominent for users, was done without hesitation.

“There was no debate,” he said. “They just did it.”

The lawsuit also accused ByteDance engineers working on Chinese apps of demoting content that expressed support for pro-democracy protests in Hong Kong, while making more prominent criticisms of the protests.

As an example of what was described as the “lawlessness” inside the company, the lawsuit says the founder of ByteDance, Zhang Yiming, facilitated bribes to Lu Wei, a senior government official charged with internet regulation. Chinese media at the time covered the trial of Lu Wei, who was charged in 2018 and subsequently convicted of bribery, but there was no mention of who had paid the bribes.

TikTok has sought to convince lawmakers that it operates at an arm’s length from ByteDance and that the Chinese government has no influence or special access to the app. It has been working on a costly plan to store American user data on servers operated by Oracle in the United States, known as Project Texas.

Mr. Yu, who was born and raised in China and now lives in San Francisco, said in the interview that during his time with the company, American user data on TikTok was stored in the United States. But engineers in China had access to it, he said.

The geographic location of servers is “irrelevant,” he said, because engineers could be a continent away but still have access. During his tenure at the company, he said, certain engineers had “backdoor” access to user data.

His lawsuit demands lost earnings, punitive damages and 220,000 ByteDance shares that had not vested by the time he was dismissed. The complaint does not cite a specific dollar amount in damages, but the shares alone would be worth tens of millions of dollars. The case was filed after several years of mediation with the company failed.

Mr. Yu is being represented by Charles Jung, a San Francisco lawyer who specializes in employment disputes.

EXHIBIT B

JUSTICE DEPARTMENT

The DOJ and FBI are investigating TikTok over allegations that employees spied on journalists

The investigation comes as the Biden administration is demanding TikTok's Chinese-owned parent company, ByteDance, sell the video-sharing app or see it banned in the United States.



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March 17, 2023, 10:50 AM PDT / Updated March 17, 2023, 12:45 PM PDT

By Ken Dilanian and Rebecca Shabad

WASHINGTON – The Department of Justice and FBI are investigating TikTok, including previously disclosed allegations that the company's employees spied on journalists, a law enforcement official with knowledge of the matter said Friday.

The investigation is being conducted by Justice Department prosecutors in Washington and in the Eastern District of Virginia, along with the FBI, the officials said.

The DOJ and FBI declined to comment.

In response, a ByteDance spokesperson told NBC, "We have strongly condemned the actions of the individuals found to have been involved, and they are no longer employed at ByteDance. Our internal investigation is still ongoing, and we will cooperate with any official investigations when brought to us."

News about the probe was first reported on Thursday by [Forbes](#), which said the employees implicated in the surveillance were fired after it was confirmed they were trying to find the sources of leaks to journalists from inside the company. A ByteDance investigation found that the employees gained access to the IP addresses and other data of the reporters and some of their contacts connected to them through their TikTok accounts, Forbes reported.

Biden administration gives TikTok owners ultimatum

01:47



The federal investigation into ByteDance comes as concern over the security threats to Americans related to TikTok has intensified this week. The Biden administration has threatened a potential ban on the popular social media app in the U.S. if its Chinese owners refuse to sell their stakes in it, a source close to the company told NBC News on Thursday. That came after U.S.

intelligence officials expressed concerns that China can use TikTok to spy on Americans or influence U.S. public opinion.

Asked what message the White House is sending to TikTok users in the U.S., press secretary Karine Jean-Pierre told reporters on Thursday, "We've expressed concerns over China's potential use of software platforms that could endanger or threaten America's safety and their national security. So that is the president's concern. That is why we have called on Congress to take action."

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ABORTION RIGHTS

Abortion rights amendments qualify for the ballot in Colorado and South Dakota

Jean-Pierre reiterated that a group of federal agencies are currently conducting a review of TikTok's software.

Biden [backs legislation](#) introduced earlier this month by a bipartisan group of senators that would allow the federal government to regulate and ban foreign-produced technology, including TikTok.

[The bill](#) would give the secretary of commerce the power to regulate tech produced by six countries that have adversarial relationships with the U.S.: China, Cuba, Iran, North Korea, Russia and Venezuela.

On Capitol Hill, there is an appetite to address the issue, although it's not clear how far lawmakers are willing to go.

Asked Friday if he believes TikTok represents a national security risk, Speaker Kevin McCarthy said, "Yes."



Ken Dilanian

Ken Dilanian is the justice and intelligence correspondent for NBC News, based in Washington.



Rebecca Shabad

Rebecca Shabad is a politics reporter for NBC News based in Washington.

Sahil Kapur contributed.

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EXHIBIT C



Jaime Dorenbaum
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September 1, 2023

VIA EMAIL ONLY

Charles Thompson
GREENBERG TRAURIG, LLP
101 Second Street, Suite 2200
San Francisco, California 94105
Telephone: 415.655.1300
Charles.Thompson@gtlaw.com

Re: **Yu v. ByteDance Inc., et al., Northern District of California Case No. 23-cv-03503-SI**
Unauthorized Access to Computer Systems

Dear Mr. Thompson –

We have learned that there have been, and continue to be, efforts to gain unauthorized access to Yintao Yu's personal computer systems. Logs demonstrate that there was a significant attack on his systems on the same day ByteDance, Inc. likely learned of the allegations in the First Amended Complaint, when New York Times published details of those allegations. Since then, Mr. Yu and others connected to him have observed anomalous behavior suggesting attempts to gain unauthorized and possibly illegal and unethical access to Mr. Yu and his communications.

ByteDance and/or its related entities are known to conduct surveillance on current and former employees and even journalists and their contacts. ByteDance has a team “responsible for monitoring employee conduct”. Cecilia Kang, *ByteDance Inquiry Finds Employees Obtained User Data of 2 Journalists*, THE NEW YORK TIMES (Dec. 22, 2022), <https://www.nytimes.com/2022/12/22/technology/byte-dance-tik-tok-internal-investigation.html>. The company has “gained access to the IP addresses and other data of two reporters and a small number of people connected to the reporters via their TikTok accounts.” *Id.*

At least one specific internal team has been identified and known to surveil former employees and others. The identified “team behind the monitoring project — ByteDance’s Internal Audit and Risk Control department” Emily Baker-White, *TikTok Parent ByteDance Planned To Use TikTok To Monitor The Physical Location Of Specific American Citizens*, FORBES (Oct. 20, 2022 3:24 PM), <https://www.forbes.com/sites/emilybaker-white/2022/10/20/tiktok-bytedance-surveillance-american-user-data/?sh=5c437cd16c2d>. “The team primarily conducts investigations into potential misconduct by current and former ByteDance employees.” *Id.* “Internal materials . . . show that senior executives, including TikTok CEO Shou Zi Chew, have ordered the team to investigate individual employees, and that it has investigated employees even after they left the company.” *Id.*

Charles Thompson
September 1, 2023
Page 2 of 2

The surveillance is apparently the subject of law enforcement investigations, and the company has admitted its conduct. “The Department of Justice and FBI are investigating TikTok, including previously disclosed allegations that the company's employees spied on journalists” Ken Dilanian & Rebecca Shabad, *The DOJ and FBI Are Investigating TikTok Over Allegations That Employees Spied on Journalists*, NBC NEWS (Mar. 17, 2023), <https://www.nbcnews.com/politics/justice-department/doj-fbi-are-investigating-tiktok-allegations-employees-spied-journalis-rcna75497>. “A ByteDance investigation found that the employees gained access to the IP addresses and other data of the reporters and some of their contacts connected to them through their TikTok accounts, Forbes reported.” *Id.*

Please immediately investigate whether any surveillance, intrusions, contacts, or attempts have been made, including but not limited to access any computers, devices, or communications of Mr. Yu, his attorneys, agents, or friends. Please make a representation that no such attempts have been made.

Relatedly, we have not received a response from you related to our letter dated August 30, 2023, relating to Mr. Bourns’ communications to Mr. Yu. Please provide your response to both these items by 12:00 pm PT, Tuesday, September 5, 2023.

Thank you,

A handwritten signature in blue ink, appearing to read "Jaime Dorenbaum", with a stylized, flowing script.

Jaime Dorenbaum

EXHIBIT D



David S. Bloch
Tel 415.590.5110
blochd@gtlaw.com

Via email

September 5, 2023

Jaime Dorenbaum
Nassiri & Jung LLP
1700 Montgomery Street, Suite 208
San Francisco, CA 94111

Re: *Yu v. ByteDance Inc. et al.*

Dear Jaime:

In response to your letter of September 1, 2023, if you have any actual evidence of efforts *by ByteDance Inc.* “to gain unauthorized access to Yintao Yu’s personal computer systems,” please provide it. To be clear, that “evidence” should not consist of newspaper articles from 2022.

Your letter also seeks a response to your earlier letter of August 30, 2023. Because the August 30 letter contains no allegation of wrongdoing, there is nothing for us to respond to.

As a reminder, you are not the Court and therefore are not entitled to make demands, insist upon representations from counsel, or set arbitrary deadlines. If Mr. Yu wishes to take discovery on these or any other issues, he should proceed to arbitration as his employment agreements provide. Thank you.

Yours very truly,

A handwritten signature in black ink, appearing to be "DSB", followed by a horizontal line.

David S. Bloch
Shareholder

DSB:tt

cc: Gregory Iskander
Charles Jung

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EXHIBIT E



**Click Here for Inflation Reduction Act and Infrastructure Resources
(<https://www.wyden.senate.gov/the-bipartisan-infrastructure-law-and-the-inflation-reduction-act>)**

April 24, 2024

Wyden Statement on Aid to Israel and Ukraine, Crackdown on Fentanyl Trafficking and TikTok Divestment Legislation

Wyden Praises Support for U.S. Allies; Warns TikTok Bill Will Not Protect Americans' Privacy Against Chinese Government Surveillance

Washington, D.C. – U.S. Senator Ron Wyden, D-Ore., today applauded the passage of legislation to provide Ukraine, Israel, and America's Indo-Pacific partners with \$95 billion in security assistance to support their national defense, including \$9.15 billion in lifesaving humanitarian aid, and to stem the flow of fentanyl into the United States.

"It is shameful that House Republicans slow-walked vital aid to America's allies and partners and humanitarian relief for worsening conflicts, but I'm glad it finally will be going to the president's desk. This measure shows America is still a world leader, and I believe this aid will hasten the end of the wars in Israel and Ukraine," Wyden said.

"I'm glad that this package also includes the bipartisan FEND OFF Fentanyl Act, which will help our country fight the scourge of fentanyl by disrupting illicit opioid supply chains and sanctioning transnational criminal organizations. Oregonians know that the addiction crisis in our country has reached unprecedented levels, and it's high time that Congress crack down on illicit traffickers."

In response to the TikTok divestment bill that the House attached to the larger package, Wyden cautioned it will do less to protect Americans' privacy than needed, and warned that the executive branch should carefully exercise the bill's authority.

"I have serious concerns about any app that gives unfriendly foreign governments access to Americans' private data, and I believe there is a legitimate security risk caused by TikTok's relationship to its China-based corporate parent," Wyden said.

"However, I remain concerned that this bill could have negative effects on free speech around the world, does too little to protect Americans' privacy from being sold to China through third parties, and provides broad authority that could be abused by a future administration to violate Americans' First Amendment rights. I plan to watchdog how this legislation is implemented, and will blow the whistle if the executive branch oversteps beyond the purpose of the bill."

EXHIBIT F

ByteDance Inquiry Finds Employees Obtained User Data of 2 Journalists

The company's internal investigation showed that workers also obtained data on a small number of other U.S. users.



By Cecilia Kang

Dec. 22, 2022

Want to stay updated on what's happening in China? [Sign up for Your Places: Global Update](#), and we'll send our latest coverage to your inbox.

ByteDance, the Chinese parent company of TikTok, said on Thursday that an internal investigation found that employees had inappropriately obtained the data of U.S. TikTok users, including that of two reporters.

Over the summer, a few employees on a ByteDance team responsible for monitoring employee conduct tried to find the sources of suspected leaks of internal conversations and business documents to journalists. In doing so, the employees gained access to the IP addresses and other data of two reporters and a small number of people connected to the reporters via their TikTok accounts. They were trying to determine if those individuals were within proximity of ByteDance employees, according to the company, which added that the efforts failed to find any leaks.

The investigation was initiated after an article was published by Forbes, and the inquiry confirms part of that report and highlights the privacy and security risks associated with TikTok that U.S. lawmakers, state governors and the Trump and Biden administrations have raised for more than two years. More than a dozen states have banned TikTok from government-issued devices, and the company has

been in prolonged negotiations with the administration on security and privacy measures that would block any potential access to U.S. user data by ByteDance and the Chinese government.

ByteDance's general counsel, Erich Andersen, revealed the findings of the investigation, which was conducted by an outside law firm, in an email to employees on Thursday.

All four employees involved in the scheme were fired, the company said, correcting an earlier statement that one of the four had resigned. Two of those employees were working in China and two were in the United States. ByteDance said it had restructured its internal audit and risk team and had removed any access to U.S. data from that department.

The targeted reporters were Emily Baker-White, who wrote for BuzzFeed and is now at Forbes, and Cristina Criddle of the Financial Times, ByteDance said, though it declined to identify other affected TikTok users. Forbes reported that two more of its reporters, who are also former BuzzFeed reporters, were targeted. ByteDance said its investigation did not conclude that those additional reporters were affected but said it would re-examine raw data to determine if the allegations were true.

Mr. Andersen and ByteDance's chief executive, Rubo Liang, revealed the findings of the investigation in separate emails to employees.

"I was deeply disappointed when I was notified of the situation ... and I'm sure you feel the same," Mr. Liang wrote. "The public trust that we have spent huge efforts building is going to be significantly undermined by the misconduct of a few individuals."

The chief executive of TikTok, Shou Zi Chew, also sent an email to his employees about the investigation, expressing disappointment and stressing the company's commitment to protect U.S. data.

“We take data security incredibly seriously,” Mr. Chew said in the email. He said that over the past 15 months, the company had worked to create a new U.S.-based data storage program as a “testament to that commitment.”

The employees obtained historical data, according to ByteDance and TikTok officials. For several months, the company said, it has been in the process of putting all U.S. data on the Oracle cloud, but the past data obtained by the ByteDance employees was still available. TikTok said it planned to delete all historical data outside the Oracle systems.

The revelations come amid growing concerns by U.S. officials about the privacy and national security risks posed by TikTok, a hugely popular video-sharing app with an estimated 100 million American users. ByteDance acquired TikTok, formerly known as Musical.ly, in 2017. Since then the company has been the focus of national security officials who say the app is too closely aligned with its parent company in China and can put sensitive data, such as geolocation and the habits and interests of users in the United States, into the hands of the Chinese government.



Senator Jon Ossoff, Democrat of Georgia, questioned tech executives, including Vanessa Pappas of TikTok, at a hearing in September. Haiyun Jiang/The New York Times

In September, TikTok's chief operating officer, Vanessa Pappas, testified in a Senate hearing that the app did not share data with the Chinese government. The company has tried to distance the app from ByteDance, saying TikTok has its own corporate structure, with offices in New York, Los Angeles, Singapore and Washington.

In the hopes of allaying national security fears, ByteDance has moved the data of U.S. users to a cloud storage system operated by Oracle, the Silicon Valley software company.

TikTok has been locked in negotiations with the Biden administration on that security plan to move all U.S. data and erect walls around the data to prevent access by the Chinese government. The negotiations, which began during the Trump administration, have stalled in recent weeks, prompting a cascade of state and federal actions to restrict the use of TikTok. Senator Mark Warner, Democrat of Virginia and chairman of the Intelligence Committee, called on the administration to conclude its talks with TikTok on national security fixes to the app.

"This new development reinforces serious concerns that the social media platform has permitted TikTok engineers and executives in the People's Republic of China to repeatedly access private data of U.S. users despite repeated claims to lawmakers and users that this data was protected," Mr. Warner said. "It's time to come forward with that solution or Congress could soon be forced to step in."

Congress is set to vote as early as this week on a proposal that would ban TikTok from any federal government-issued devices. Intelligence officials, including the F.B.I. director, Christopher Wray, have warned that Chinese officials can siphon sensitive data about U.S. citizens to use for surveillance and to spread propaganda.

TikTok is in the middle of an escalating economic and trade war between the United States and China for technology leadership. The superpowers have imposed trade restrictions on foreign-made technologies and have poured hundreds of

billions of dollars into subsidies and grants to bring back tech supply chains for manufacturing within their borders.

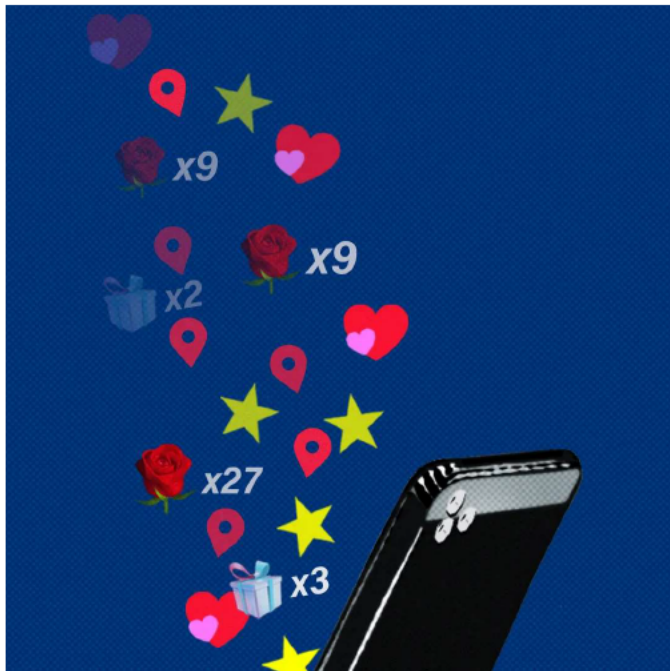
Senator Marco Rubio, Republican of Florida and a ranking member of the Intelligence Committee, has introduced legislation with Democratic support that would ban TikTok from all consumer devices. The bill would face First Amendment challenges, legal experts say, but highlights the increasing pressure to ban the app.

“No one should be surprised or fooled by ByteDance’s public apology,” Mr. Rubio said in a statement about the internal investigation. “The company is desperate to tamp down growing bipartisan concerns about how it enables the Chinese Communist Party to use — and potentially weaponize — the data of American citizens. Every day it becomes more clear that we need to ban TikTok.”

Cecilia Kang covers technology and regulation and joined The Times in 2015. She is a co-author, along with Sheera Frenkel of The Times, of “An Ugly Truth: Inside Facebook's Battle for Domination.” More about Cecilia Kang

EXHIBIT G

TIKTOK'S CHINA PROBLEM



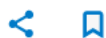
DAILY COVER

TikTok Parent ByteDance Planned To Use TikTok To Monitor The Physical Location Of Specific American Citizens

ILLUSTRATION BY STEPHANIE JONES FOR FORBES; PHOTO BY GEORGE
PETERS/GETTY IMAGES

Emily Baker-White Forbes Staff

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Oct 20, 2022, 03:24pm EDT

The project, assigned to a Beijing-led team, would have involved accessing location data from some U.S. users' devices without their knowledge or consent.

China-based team at TikTok's parent company, ByteDance, planned to use the TikTok app to

A monitor the personal location of some specific American citizens, according to materials reviewed by *Forbes*.

The team behind the monitoring project — ByteDance’s Internal Audit and Risk Control department — is led by Beijing-based executive Song Ye, who reports to ByteDance cofounder and CEO [Rubo Liang](#).

The team primarily conducts investigations into potential misconduct by current and former ByteDance employees. But in at least two cases, the Internal Audit team also planned to collect TikTok data about the location of a U.S. citizen who had never had an employment relationship with the company, the materials show. It is unclear from the materials whether data about these Americans was actually collected; however, the plan was for a Beijing-based ByteDance team to obtain location data from U.S. users’ devices.

TikTok spokesperson Maureen Shanahan said that TikTok collects approximate location information based on users’ IP addresses to “among other things, help show relevant content and ads to users, comply with applicable laws, and detect and prevent fraud and inauthentic behavior.”

But the material reviewed by *Forbes* indicates that ByteDance’s Internal Audit team was planning to use this location information to surveil individual American citizens, not to target ads or any of

these other purposes. *Forbes* is not disclosing the nature and purpose of the planned surveillance referenced in the materials in order to protect sources. TikTok and ByteDance did not answer questions about whether Internal Audit has specifically targeted any members of the U.S. government, activists, public figures or journalists.

TikTok is [reportedly close](#) to signing a contract with the Treasury Department's Committee on Foreign Investment in the United States (CFIUS), which evaluates the national security risks posed by companies of foreign ownership, and has been investigating whether the company's Chinese ownership could enable the Chinese government to access personal information about U.S. TikTok users. (*Disclosure: In a past life, I held policy positions at Facebook and Spotify.*)

In September, President Biden signed an executive order enumerating specific risks that CFIUS should consider when assessing companies of foreign ownership. The [order](#), which states that it intends to “emphasize . . . the risks presented by foreign adversaries’ access to data of United States persons,” focuses specifically on foreign companies’ potential use of data “for the surveillance, tracing, tracking, and targeting of individuals or groups of individuals, with potential adverse impacts on national security.”

The Treasury Department did not respond to a request for comment.

The Internal Audit and Risk Control team runs regular audits and investigations of TikTok and ByteDance employees, for infractions like conflicts of interest and misuse of company resources, and also for leaks of confidential information. Internal materials reviewed by *Forbes* show that senior executives, including TikTok CEO Shou Zi Chew, have ordered the team to investigate individual employees, and that it has investigated employees even after they left the company.

The internal audit team uses a data request system known to employees as the “green channel,” according to documents and records from Lark, ByteDance’s internal office management software. These documents and records show that “green channel” requests for information about U.S. employees have pulled that data from mainland China.

**TikTok and
ByteDance did not
answer questions
about whether
Internal Audit has
specifically targeted**

any members of the U.S. government, activists, public figures or journalists.

“Like most companies our size, we have an internal audit function responsible for objectively auditing and evaluating the company and our employees' adherence to our codes of conduct,” said ByteDance spokesperson Jennifer Banks in a statement. “This team provides its recommendations to the leadership team.”

ByteDance is not the first tech giant to have considered using an app to monitor specific U.S. users. In 2017, the New York Times [reported](#) that Uber had identified various local politicians and regulators and served them a separate, misleading version of the Uber app to avoid regulatory penalties. At the time, Uber acknowledged that it had run the program, called “greyball,” but said it was used to deny ride requests to “opponents who collude with officials on secret ‘stings’ meant to entrap drivers,” among other groups.

TikTok did not respond to questions about whether it has ever served different content or experiences to government officials, regulators, activists or journalists than the general public in the TikTok app.

Both Uber and Facebook also reportedly tracked the location of journalists reporting on their apps. A [2015 investigation](#) by the Electronic Privacy Information Center found that Uber had monitored the location of journalists covering the company. Uber did not specifically respond to this claim. The 2021 [book](#) *An Ugly Truth* alleges that Facebook did the same thing, in an effort to identify the journalists' sources. Facebook did not respond directly to the assertions in the book, but a spokesperson [told](#) the San Jose Mercury News in 2018 that, like other companies, Facebook “routinely use[s] business records in workplace investigations.”

“It is impossible to keep data that should not be stored in CN from being retained in CN-based servers.”

But an important factor distinguishes ByteDance's planned collection of private users' information from those cases: TikTok [recently told lawmakers](#) that access to certain U.S. user data — likely including location — will be “limited only to authorized personnel, pursuant to protocols being developed with the U.S. Government.” TikTok and

ByteDance did not answer questions about whether Internal Audit executive Song Ye or other members of the department are “authorized personnel” for the purposes of these protocols.

These promises are part of [Project Texas](#), TikTok’s massive effort to rebuild its internal systems so that China-based employees will not be able to access a swath of “protected” identifying user data about U.S. TikTok users, including their phone numbers, birthdays and draft videos. This effort is central to the company’s national security negotiations with CFIUS.

At a Senate hearing in September, TikTok Chief Operating Officer Vanessa Pappas [said](#) the forthcoming CFIUS contract would “satisfy all national security concerns” about the app. Still, some senators appeared [skeptical](#). In July, the Senate Intelligence Committee [began an investigation](#) into whether TikTok misled lawmakers by withholding information about China-based employees’ access to U.S. data earlier this year, following a June [report](#) in BuzzFeed News showing that U.S. user data had been repeatedly accessed by ByteDance employees in China.

In a statement about TikTok’s data access controls, TikTok spokesperson Shanahan said that the company uses tools like encryption and “security monitoring” to keep data secure, access approval is overseen by U.S. personnel, and that

employees are granted access to U.S. data “on an as-needed basis.”

It is unclear what role ByteDance’s Internal Audit team will play in TikTok’s efforts to limit China-based employees’ access to U.S. user data, especially given the team’s plans to monitor some American citizens’ locations using the TikTok app. But a fraud risk assessment written by a member of the team in late 2021 highlighted data storage concerns, saying that according to employees responsible for the company’s data, “it is impossible to keep data that should not be stored in CN from being retained in CN-based servers, even after ByteDance stands up a primary storage center [sic] in Singapore. [Lark data is saved in China.]” (brackets in original).

Moreover, a leaked audio conversation from January 2022 shows that the Beijing-based team was, at that point, gathering additional information on Project Texas. In the call, a member of TikTok’s U.S. Trust & Safety team recounted an unusual conversation to his manager: The employee had been asked by Chris Lepitak, TikTok’s Chief Internal Auditor, to meet at an LA-area restaurant off hours. Lepitak, who reports to Beijing-based Song Ye, then asked the employee detailed questions about the location and details of the Oracle server that is central to TikTok’s plans to limit foreign access to personal U.S. user data. The employee told his manager that he was “freaked out” by the exchange. TikTok

and ByteDance did not respond to questions about this conversation.

Oracle spokesperson Ken Glueck said that while TikTok does currently use Oracle's cloud services, "we have absolutely no insight one way or the other" into who can access TikTok user data. "Today, TikTok is running in the Oracle cloud, but just like Bank of America, General Motors, and a million other customers, they have full control of everything they're doing," he said.

This corroborates a January statement made by TikTok's Head of Data Defense in another leaked audio call. In that call, the executive said to a colleague: "It's almost incorrect to call it Oracle Cloud, because they're just giving us bare metal, and then we're building our VMs [virtual machines] on top of it."

Glueck made clear that this would change if and when TikTok finalizes its contract with the federal government. "But unless and until that's the case," he said, Oracle is not providing anything "other than our own security" for TikTok.

TikTok did not answer questions from *Forbes* about the status of the company's negotiations with CFIUS. But in a statement to Bloomberg published early this morning, TikTok spokesperson Brooke Oberwetter said: "We are confident that we are on a path to fully satisfy all reasonable U.S. national security concerns."

Richard Nieva contributed reporting.

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Emily Baker-White is an investigative reporter and senior writer at Forbes. She joined Forbes in 2022 and covers the way tech companies shape our discourse, commerce, and... **Read More**

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EXHIBIT H



EAST ASIA

Amnesty: Chinese Police Use Torture to Extract Confessions

November 12, 2015 2:59 AM

UPDATE November 12, 2015 7:56 AM By VOA News



FILE - Chinese paramilitary police stand in formation after a flag raising ceremony at Tiananmen Square on National Day. Methods of torture outlined by Amnesty include beatings, sleep deprivation, being forced into painful positions for long periods, and

Chinese police still routinely use torture to extract confessions from criminal suspects, Amnesty International said Thursday, despite Beijing's recent criminal justice and legal reforms.

The report, entitled "[No End in Sight](#)," is based in part on interviews with dozens of human rights lawyers, and comes as the United Nations is set to conduct a regular review of China's record on torture.

"For the police, obtaining a confession is still the easiest way to secure a conviction," said Patrick Poon, a China researcher at the London-based rights group.

Methods of torture outlined by Amnesty include beatings, sleep deprivation, being forced into painful positions for long periods, and withholding food, water, or medication.

Since 2010, China has introduced a number of guidelines it says have successfully reduced torture, including laws explicitly banning the practice.

But the measures have been ineffective, says Amnesty, partly because the courts that are supposed to punish such behavior are controlled by the ruling Communist Party.

"China's police authority still wields too much power within the judicial system," the report said, "As a result, few perpetrators of torture are held to account."

Amnesty also faulted the "deep-rooted practices" of China's criminal justice system. "The system still overly relies on 'confessions' as the basis of most convictions, providing an almost irresistible incentive for law enforcement agencies to obtain them by any means necessary," it said.

While it did not directly respond to the report, Beijing's Foreign Ministry Thursday insisted Chinese law is committed to ensuring "fairness and justice."



FILE - Paramilitary police officers stand guard for a welcoming ceremony for Germany's Chancellor Angela Merkel outside the Great Hall of the People in Beijing, China. A new report from Amnesty International alleges Chinese police widely use torture.

"Extorting a confession by torture is explicitly banned by China's laws. The person who is found exercising torture during interrogation will be subject to punishment," said ministry spokesman Hong Lei.

The Amnesty findings were corroborated by other recent reports, including a May investigation by Human Rights Watch, which dismissed China's criminal justice reforms as being "easily circumvented."

China next week will be scrutinized by the U.N. Convention against Torture, an international panel of experts that judges whether signatory nations are complying with the U.N.'s anti-torture convention.

"Torture remains a daily reality in China, and this is a critical moment for Beijing to answer tough questions about why this problem still exists," said HRW China director Sophie Richardson in a statement on Thursday.

"Dishonesty, evasion, or obfuscation from officials at the review can only deepen torture survivors' agony. An honest discussion that commits to accountability for torturers might help mitigate survivors' pain and indicate willingness to reform."



VOA News

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EXHIBIT I

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November 11, 2015

Torture in China: Who, What, Why and How

A 2014 global survey of attitudes towards torture carried out in 21 countries found a vast majority of the 21,000 people surveyed believe there should be clear laws against torture. And rightfully so. Torture is illegal, barbaric and inhumane, and can never be justified. It has been outlawed internationally since 1948, yet it remains rampant in many countries, including in China.

Amnesty's latest report No End In Sight: Torture and Forced Confessions in China finds that China's criminal justice system is still heavily reliant on forced confessions, usually extracted through torture, and that lawyers who try to challenge torture cases are routinely ignored, harassed or even detained and tortured themselves.

Here's a quick snapshot of the facts:

WHO

Torture in China is particularly prevalent against criminal suspects in pre-trial detention, that is, before they are tried in court. Individuals whom the government thinks pose political risks are particularly at risk of torture. These include human rights defenders, officials detained for corruption, Falun Gong adherents, and Tibetan and Uighur suspected of "separatism". As lawyers have become increasingly willing to challenge torture cases, some have themselves ended up detained and tortured by the police.

“

My hands were tied to the upper part of a bunk bed, and one of my legs was tied to the lower part of the bed. I was made to stand in that position while the guards used hangers to beat my head and plywood to beat my body. The guards put chili in my mouth and I was not allowed to use the toilet. After this, I was suspended from the ceiling. I was subjected to this kind of punishment for 27 days.

Falun Gong practitioner

WHAT

Torture usually takes place when someone in authority intentionally causes severe pain or suffering for a specific purpose, such as getting information or in retaliation against someone. Torture in China is frequently carried out in detention centres and unofficial facilities by prison or police officials, or by inmates at the instigation of officials.

WHY

Torture in China is used to achieve two main goals: one, to extract confessions and obtain evidence for criminal prosecutions, and the other, to punish. For example, the report No End in Sight details activist Yang Mingyu's experience, as related by his lawyer. Yang Mingyu had his hand and feet cuffed to a bed for three days in retaliation for his complaint about the quality of food he was given in detention. As a result, he had to eat, urinate and defecate while strapped to the bed.

HOW

Torture can be physical, such as beating or forcing into a painful position, or it can be psychological, such as sleep deprivation. We've listed some methods and tools

below that are commonly used in China:

- *Tiger bench*

The individual's legs are tightly bound to a bench, and bricks are gradually added under the victim's feet, forcing the legs to bend backwards.

- *'Diaodiaoyi' (Hanging restraint chair)*

A person seated in this restraint chair will be unable to lean back or have his/her feet rest on the ground. The chest will be bound to a board while the hands are cuffed, rendering the entire body immobile.

“

I was held for 87 days and everyday I suffered some form of torture, the worst of which was a special contraption I was forced to sit on, the 'diaodiaoyi' (hanging restraint chair). Typically I was forced to sit on it for at least 12 hours every day. At times, it was one or two full days, and the longest time (I was in it) was five full days.

Cai Ying, Chinese lawyer

- *Sleep deprivation through means including exposure to bright lights over bed*
- *Exposure to extreme heat or cold*
- *Use of handcuffs or ankle fetters or other restraints for prolonged periods, including the use of a chair referred to as an 'iron chair'*

“

My hands were handcuffed behind an iron chair (I was made to sit in). As I'm petite, my hands could hardly reach round the back of the broad chair but the officers forcibly did it. The sharp edges of the chair and handcuffs cut into me. I could feel all my muscles and joints completely stretched and my hands swollen; I felt so much pain I didn't want to live. The two police officers repeatedly yanked on the handcuffs and I screamed each time they did so.

Yu Wensheng, Chinese lawyer

No End In Sight: Torture and Forced Confessions is published just ahead of a United Nations review of how China has complied with its obligations under the Convention Against Torture (CAT). Amnesty also published in 2014 a report on China's growing production and trade in "tools of torture".

Further Reading

- China: Torture and forced confessions rampant amid systematic trampling of lawyers' rights
- China: Country Facts
- China's Trade in Tools of Torture